IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.7505 OF 2006.

Jagdish Dhondiba Lokhande. ..Petitioner

Vs.

Dnyaneshwar Marutirao
Akhade. ..Respondent.

Mr.Jaydeep S. Deo, Advocate for the
Petitioner.

Mr.G.S.Godbole, Advocate for Respondent.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:17TH NOVEMBER, 2006.

P.C.:-

1. Heard.

2. The petitioner challenges the judgment and order of eviction passed by the lower Appellate Court in Civil Appeal No.99 of 2002, dated 17th of August, 2006. By the impugned judgment and order lower Appellate Court has set aside the decree of dismissal of the suit passed by the Trial Court on 4th January,2005 in Civil Suit No. 89 of 2002. The said Suit was filed by the respondent for eviction of the petitioner on three grounds namely,one

being the requirement of the suit premises for personal occupation, secondly on the ground of the permanent construction carried out to the suit premises without the consent of the landlord and thirdly that the petitioner had breached the terms of the lease.

3. The Trial Court dismissed the suit on all the three grounds, while the first Appellate Court set aside those findings and decreed the Suit on all three grounds. The lower Appellate Court also held that the greater hardship will be caused to the respondent if the decree is refused to the respondent.

4. It is not necessary to deal with all the grounds of challenge and suffice to refer only one ground regarding carrying out of permanent construction to the suit premises without the consent of the land lord. Lower Appellate Court on analysis of the evidence on record has held that the finding arrived by the Trial Court in this regard is contrary to the materials on record and further that entire roof of the suit premises was removed and

replaced without the consent of the respondent inspite of the fact that the petitioner was fully aware of the procedure which is required to be followed while carrying out any such repairs of permanent nature to the leased premises. The Lower Appellate Court has also held that on earlier occasion the petitioner himself had carried out some repairs to one of the walls of the suit premises after obtaining prior consent of the respondent.

5. As regards the contention which is sought to be raised on behalf of the petitioner that the repairs were in fact carried out by another tenant Shri.Punekar on the first floor of the suit premises which was in his occupation, there is no evidence to disclose absence of participation of the petitioner in such work. There was no evidence produced by the petitioner to establish about the ignorance or lack of knowledge about such repairs stated to have been carried out in the premises by the another tenant. Since the entire roof in the occupation of the premises was removed and replaced, the finding in that regard arrived

at by the lower Appellate Court cannot be found perverse as it is unbelievable that such replacement of the roof of the suit premises could have ever happened without knowledge and consent of the petitioner. Being so, the allegation which was made on behalf of the respondent regarding collusion of the petitioner with the said another tenant in relation to the permanent construction to the suit premises without the consent of the respondent was fully established.

6. The said finding is clearly born from record and nothing is brought to my notice even to suggest remotely that the same is either contrary to materials on record or being perverse for any other reason. There is no case made out for interference in the impugned order. No jurisdictional error is disclosed to warrant exercise of powers under Article 227 of the Constitution.

7. Once one of the grounds on which the proceeding for eviction is established, it is not necessary to consider whether the eviction can bejustified on other grounds also. Since

eviction on the ground carrying out permanent construction without the consent of the respondent has been established, decree for eviction is well justified.

8. Referring to the provisions comprised in the Section 16(1)(g) of the Maharashtra Rent Control Act,1999, it was sought to be contended that the construction in the case in hand was carried out by another tenant and not by the petitioner. As already observed above, construction has been carried out to the suit premises in collusion with another tenant by the petitioner, though it would also benefit to other tenants. Being so, it cannot be said that the petitioner has not participated in the construction.

9. For the reasons stated above, therefore, there is no case made out for interference. Hence the petition fails and is dismissed.

10. At the request of the learned Advocate, time to vacate the suit premises is extended till 31st of March, 2007 subject to the petitioner and all the major members of the

family of the petitioner filing undertaking to the effect that they will not induct any third party in the suit premises nor will create any third party interest therein and will deliver vacant peaceful possession of the suit premises to the respondent on or before 31st March, 2007. Undertaking to be filed within two weeks from today.

[R.M.S.KHANDEPARKAR,J]